

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2325

Introduced by Assembly Member Lieu

February 19, 2010

~~An act relating to economic development.~~ *An act to amend Section 2945.1 of the Civil Code, relating to mortgage foreclosure consultants.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2325, as amended, Lieu. ~~Economic development: job creation.~~
Mortgage foreclosure consultants: loan audits.

Existing law defines a foreclosure consultant as any person who makes any solicitation, representation, or offer to any homeowner to perform for compensation or who, for compensation, performs specified services relating to foreclosure sales, including performing debt, budget, or financial counseling of any type and giving any advise, explanation, or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or reinstatement of an obligation secured by a lien on the residence. Existing law requires a person to register with, and obtain a certificate from, the Department of Justice to provide foreclosure consultant services. Existing law establishes various prohibited acts applicable to foreclosure consultants, including prohibiting a foreclosure consultant from claiming, demanding, charging, collecting, or receiving any compensation before fully performing the services which the foreclosure consultant was contracted to perform. Existing law makes it a crime to perform foreclosure consultant services without being registered with the department or to violate the prohibited acts applicable to foreclosure consultants.

This bill would provide that foreclosure consultant services include the audit of any obligation secured by a lien on a residence in foreclosure and thereby would require a foreclosure consultant to register with the department to provide those audits.

By expanding the scope of persons subject to provisions of law applicable to foreclosure consultants, a violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes various programs related to the economic development of this state.~~

~~This bill would state the intent of the Legislature to enact legislation that will lead to the creation of good-paying jobs that will improve California's economic environment.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2945.1 of the Civil Code is amended to
2 read:

3 2945.1. The following definitions apply to this chapter:

4 (a) "Foreclosure consultant" means any person who makes any
5 solicitation, representation, or offer to any owner to perform for
6 compensation or who, for compensation, performs any service
7 which the person in any manner represents will in any manner do
8 any of the following:

9 (1) Stop or postpone the foreclosure sale.

10 (2) Obtain any forbearance from any beneficiary or mortgagee.

11 (3) Assist the owner to exercise the right of reinstatement
12 provided in Section 2924c.

13 (4) Obtain any extension of the period within which the owner
14 may reinstate his or her obligation.

15 (5) Obtain any waiver of an acceleration clause contained in
16 any promissory note or contract secured by a deed of trust or

1 mortgage on a residence in foreclosure or contained that deed of
2 trust or mortgage.

3 (6) Assist the owner to obtain a loan or advance of funds.

4 (7) Avoid or ameliorate the impairment of the owner's credit
5 resulting from the recording of a notice of default or the conduct
6 of a foreclosure sale.

7 (8) Save the owner's residence from foreclosure.

8 (9) Assist the owner in obtaining from the beneficiary,
9 mortgagee, trustee under a power of sale, or counsel for the
10 beneficiary, mortgagee, or trustee, the remaining proceeds from
11 the foreclosure sale of the owner's residence.

12 (b) A foreclosure consultant does not include any of the
13 following:

14 (1) A person licensed to practice law in this state when the
15 person renders service in the course of his or her practice as an
16 attorney at law.

17 (2) A person licensed under Division 3 (commencing with
18 Section 12000) of the Financial Code when the person is acting
19 as a prorater as defined therein.

20 (3) A person licensed under Part 1 (commencing with Section
21 10000) of Division 4 of the Business and Professions Code when
22 the person is acting under the authority of that license, as described
23 in Section 10131 or 10131.1 of the Business and Professions Code.

24 (4) A person licensed under Chapter 1 (commencing with
25 Section 5000) of Division 3 of the Business and Professions Code
26 when the person is acting in any capacity for which the person is
27 licensed under those provisions.

28 (5) A person or his or her authorized agent acting under the
29 express authority or written approval of the Department of Housing
30 and Urban Development or other department or agency of the
31 United States or this state to provide services.

32 (6) A person who holds or is owed an obligation secured by a
33 lien on any residence in foreclosure when the person performs
34 services in connection with this obligation or lien.

35 (7) Any person licensed to make loans pursuant to Division 9
36 (commencing with Section 22000) of the Financial Code when
37 the person is acting under the authority of that license.

38 (8) Any person or entity doing business under any law of this
39 state, or of the United States relating to banks, trust companies,
40 savings and loan associations, industrial loan companies, pension

1 trusts, credit unions, insurance companies, or any person or entity
2 authorized under the laws of this state to conduct a title or escrow
3 business, or a mortgagee which is a United States Department of
4 Housing and Urban Development approved mortgagee and any
5 subsidiary or affiliate of the above, and any agent or employee of
6 the above while engaged in the business of these persons or entities.

7 (9) A person licensed as a residential mortgage lender or servicer
8 pursuant to Division 20 (commencing with Section 50000) of the
9 Financial Code, when acting under the authority of that license.

10 (c) Notwithstanding subdivision (b), any person who provides
11 services pursuant to paragraph (9) of subdivision (a) is a foreclosure
12 consultant unless he or she is the owner's attorney.

13 (d) "Person" means any individual, partnership, corporation,
14 limited liability company, association or other group, however
15 organized.

16 (e) "Service" means and includes, but is not limited to, any of
17 the following:

18 (1) Debt, budget, or financial counseling of any type, *including*
19 *the audit of any obligation secured by a lien on the residence in*
20 *foreclosure.*

21 (2) Receiving money for the purpose of distributing it to
22 creditors in payment or partial payment of any obligation secured
23 by a lien on a residence in foreclosure.

24 (3) Contacting creditors on behalf of an owner of a residence
25 in foreclosure.

26 (4) Arranging or attempting to arrange for an extension of the
27 period within which the owner of a residence in foreclosure may
28 cure his or her default and reinstate his or her obligation pursuant
29 to Section 2924c.

30 (5) Arranging or attempting to arrange for any delay or
31 postponement of the time of sale of the residence in foreclosure.

32 (6) Advising the filing of any document or assisting in any
33 manner in the preparation of any document for filing with any
34 bankruptcy court.

35 (7) Giving any advice, explanation, or instruction to an owner
36 of a residence in foreclosure which in any manner relates to the
37 cure of a default in or the reinstatement of an obligation secured
38 by a lien on the residence in foreclosure, the full satisfaction of
39 that obligation, or the postponement or avoidance of a sale of a

1 residence in foreclosure pursuant to a power of sale contained in
2 any deed of trust.

3 (8) Arranging or attempting to arrange for the payment by the
4 beneficiary, mortgagee, trustee under a power of sale, or counsel
5 for the beneficiary, mortgagee, or trustee, of the remaining proceeds
6 to which the owner is entitled from a foreclosure sale of the
7 owner's residence in foreclosure. Arranging or attempting to
8 arrange for the payment shall include any arrangement where the
9 owner transfers or assigns the right to the remaining proceeds of
10 a foreclosure sale to the foreclosure consultant or any person
11 designated by the foreclosure consultant, whether that transfer is
12 effected by agreement, assignment, deed, power of attorney, or
13 assignment of claim.

14 (f) "Residence in foreclosure" means a residence in foreclosure
15 as defined in Section 1695.1.

16 (g) "Owner" means a property owner as defined in Section
17 1695.1.

18 (h) "Contract" means any agreement, or any term thereof,
19 between a foreclosure consultant and an owner for the rendition
20 of any service as defined in subdivision (e).

21 *SEC. 2. No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *the only costs that may be incurred by a local agency or school*
24 *district will be incurred because this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 ~~SECTION 1. It is the intent of the Legislature to enact~~
31 ~~legislation that will lead to the creation of good-paying jobs that~~
32 ~~will improve California's economic environment.~~